

This is further evidenced by the inclusion of drawings in the publication of the application (Pub. No. US 2005/0225748 A1) on October 13, 2005.

III. Rejection under 35 U.S.C. §112, second paragraph

Claim 28 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is respectfully traversed.

The Office Action asserts that the terms "preferably half full" render the claim indefinite. Applicants direct the Examiner's attention to the Amendment filed on July 31, 2006, in which the terms "preferably half full" were canceled from the claims. Accordingly, withdrawal of the rejection is respectfully requested.

IV. Rejections under 35 U.S.C. §102(b)

Claims 25-39, 41-43 and 46-48 are rejected under 35 U.S.C. §102(b) over Ricklefs (DE 19854812). This rejection is respectfully traversed.

Independent claim 25, and in like manner, independent claim 41, recites, among other features, "wherein the camera and the evaluating unit are formed so that the image is recorded by the camera and the course of the interface is resolved and the course of the interface is evaluated by the evaluating unit for determining the inclination" (emphasis added). Applicants submit that Ricklefs cannot reasonably be construed to teach or suggest, such a feature as recited in the independent claims.

The invention of Ricklefs is directed to an inclination sensor that determines angle deviations from a reference position by measuring the position of a gas bubble. Importantly, the objective of Ricklefs is an improvement of the detection of the center of gravity of the gas bubble so that angle deviations from a reference position can be determined. See, for example, page 4 lines 1-4 of Ricklefs.

Ricklefs discloses that the position of the gas bubble can be measured by using a camera. For example, Ricklefs discloses a spirit level (3) having a gas bubble (4), and a

camera (9) that faces the spirit level (3). See Ricklefs, for example, Figure 4. As discussed on page 7, second paragraph, the sole function of the camera (9) of Ricklefs is to determine the position of the gas bubble (4).

More specifically, the camera of Ricklefs is used for determining the position of a spot or center of gravity of the gas bubble by comparing the electrical outputs from an electrical camera and determining the position of the gas bubble based on the brightest spot, which correlates with the strongest light signal received by the camera. In this respect, by determining only the center of gravity of the gas bubble, Ricklefs is not concerned with the edge or silhouette of the image, but the center. In other words, the camera of Ricklefs is not used for resolving the boundary layer or interface. Thus, the course of the interface is not resolved and the course of the interface is not evaluated by the evaluating unit for determining the inclination.

This fact is further supported by page 7 and Figure 5, in which Ricklefs discloses that the device will work equally well with a fuzzy image, and by page 4, line 20 through page 5, line 1, which discloses that because the optical structure is advantageously arranged, optical aberrations that occur, such as those produced by the bubble length that are dependent on the temperature and manufacturing tolerances, have practically no effect on the measured results.

Moreover, Applicants submit that one of ordinary skill in the art would not have been motivated to modify the camera of Ricklefs to achieve the claimed features because Ricklefs teaches away from doing so. For example, the objective of Ricklefs is to create a simple cost effective device with high manufacturing tolerances. See, for example, page 4 of Ricklefs. Modifying Ricklefs would result in complicating the manufacturing of the device, and increasing the manufacturing costs.

Thus, in view of the above remarks, Ricklefs does not disclose or suggest "wherein the camera and the evaluating unit are formed so that the image is recorded by the camera and

the course of the interface is resolved and the course of the interface is evaluated by the evaluating unit for determining the inclination" (emphasis added), as recited in independent claims 25 and 41. For at least these reasons, withdrawal of the rejection of these claims is respectfully requested.

Claims 26-39 depend from independent claim 25 and thus, are also allowable for at least the reasons discussed above, in addition to the features they recite. Withdrawal of the rejection of these claims is also requested.

Claims 42 and 43 depend from independent claim 41 and thus, are also allowable for at least the reasons discussed above in addition to the features they recite. Withdrawal of the rejection of these claims is also requested.

V. Rejections under 35 U.S.C. §103(a)

Claim 40 is rejected under 35 U.S.C. §103(a) over Knestel (U.S. Patent No. 5,781,286) in view of Ricklefs. This rejection is respectfully requested.

The Office Action asserts that Knestel discloses a distance measuring device that includes an optical inclinometer. The Office Action acknowledges that Knestel does not disclose an inclinometer that includes a camera and an evaluation unit as recited in claim 25. The Office Action thus relies on Ricklefs for disclosing a camera and an evaluation unit.

However, as discussed above, Ricklefs does not disclose a camera and an evaluation unit that "are formed so that the image is recorded by the camera and the course of the interface is resolved and the course of the interface is evaluated by the evaluating unit for determining the inclination" (emphasis added), as recited in independent claim 25.

Accordingly, because Knestel fails to remedy the deficiencies of Ricklefs, Applicants submit that claim 40 is patentable for at least the dependence of this claim on independent claim 25, as well as for the separately patentable subject matter that claim 40 recites.

Withdrawal of the rejection is respectfully requested.

Claims 45, 49 and 51 are rejected under 35 U.S.C. §103(a) over Ricklefs (DE 19854812). This rejection is respectfully traversed.

As discussed above, Ricklefs does not disclose all of the features recited in independent claims 25 and 41. Thus, claims 45, 49 and 51 are also not disclosed or suggested by Ricklefs for at least their dependence directly or indirectly on independent claims 25 and 41, as well as for the separately patentable subject matter that each of these claims recite. Withdrawal of the rejection is respectfully requested.

VI. Conclusion

In view of at least the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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